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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

KOREA EXPORT INSURANCE CORP.,

Plaintiff and Appellant,

v.

AUDIOBAHN, INC.,

Defendant and Respondent.

G040201

(Super. Ct. No. 06CC09120)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James P. Gray, Judge. Reversed and remanded with directions.

Lee, Hong, Degerman, Kang & Schmadeka, David C. Degerman; Lee, Hong, Degerman, Kang & Waimey and Mark S. Faulkner for Plaintiff and Appellant.

Law Offices of James Andrew Hinds, Jr., and James Andrew Hinds, Jr., for Defendant and Respondent.

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Plaintiff Korea Export Insurance Corporation (KEIC) underwrites bills of exchange purchased by Korean banks from Korean exporters to finance their shipments of goods to other countries, including the United States. When defendant Audiobahn, Inc., failed to satisfy bills of exchange it had accepted for a shipment of electronic parts, KEIC paid the payee bank and asserted subrogation rights against Audiobahn. In a bench trial, the court found the payee bank to be a holder in due course of the bills of exchange, and that KEIC stood in the bank's shoes as subrogee. The court nonetheless entered judgment for Audiobahn, holding a notice provision in an assignment agreement between the shipper and KEIC imposed a condition subsequent upon KEIC's status as a holder in due course, and KEIC failed to satisfy this condition.

We conclude the trial court erred in imposing the condition subsequent. The assignment agreement did not purport to affect KEIC's right to enforce the bills of exchange, and nothing in the agreement could reasonably be read as imposing a condition subsequent. Accordingly, we reverse, and remand with instructions that the trial court enter judgment for KEIC.

I

FACTUAL AND PROCEDURAL BACKGROUND

Under a sales agreement, exporter Mega Power, Inc. (Mega Power), agreed to ship electronic goods from Korea to importer Audiobahn in America. Mega Power sold its right to receive Audiobahn's payment for the shipment to Kookmin Bank by issuing bills of exchange, in the amounts of \$256,414.98 and \$63,254.40, respectively. The bills of exchange specified Kookmin Bank as payee, payable within a specified period of time upon acceptance by Audiobahn. Mega Power also provided Kookmin Bank with bills of lading for the shipped goods, so that Audiobahn would receive title to the shipped goods only after it had accepted the bills of exchange. Audiobahn accepted the bills of exchange, thus obligating itself to pay for the shipped goods.

Audiobahn failed to satisfy the bills of exchange, first because of cash flow problems, and later because of offsets arising from previous disputes it had with Mega Power and related companies. Because Audiobahn failed to pay the bills of exchange, KEIC, as underwriter, paid the amount owed to Kookmin Bank. KEIC also obtained from Mega Power letters of assignment giving KEIC Mega Power's rights under its sales agreement with Audiobahn.

Asserting its subrogation and assignment rights, KEIC sued Audiobahn for the two unpaid letters of exchange. Following a bench trial, the court determined that Kookmin Bank was a holder in due course of the letters of exchange, and that KEIC stood in Kookmin's shoes. The court, however, determined that KEIC was required to provide Audiobahn notice of KEIC's rights to receive payment "at its earliest opportunity." Relying on "the intention of mechanics lien law" and a notice provision in the letters of assignment, the court held that prompt notice to Audiobahn was a condition subsequent to KEIC maintaining its holder in due course status. Finding neither Mega Power nor KEIC provided prompt notice of KEIC's interest, the trial court entered judgment in Autobahn's favor. KEIC now appeals.

I

DISCUSSION

Neither the Statutes Nor the Assignment Agreement Created a Condition Subsequent to KEIC's Rights to Enforce the Bills of Exchange

KEIC contends the trial court erred in holding that prompt notice was a condition subsequent to enforcement of KEIC's subrogation rights. We agree.

Uniform Commercial Code section 3205, subdivision (b), provides that a holder in due course of a negotiable instrument, such as a bill of exchange,¹ is subject

¹ The official comment to Uniform Commercial Code section 3104 recognizes that for purposes of article 2, the term "bill of exchange" is generally understood to be a synonym for the term "draft."

only to defenses of duress, incapacity, illegality, fraud in the execution, or discharge in insolvency proceedings. Uniform Commercial Code section 2302, subdivision (b), provides that “[t]ransfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course” Accordingly, the trial court’s findings that Kookmin Bank was a holder in due course, and that KEIC stood in Kookmin’s shoes preclude Audiobahn from contesting the bills of exchange because it was entitled to an offset from Mega Power.

The trial court, however, imposed a condition subsequent on KEIC’s right to enforce the bills of exchange as a holder in due course. Aside from the trial court’s reference to mechanic’s lien law, which it expressly recognized did not apply, the only basis for the court’s imposition of a condition subsequent was a notice provision in Mega Power’s letters of assignment to KEIC. The notice provision does not support the trial court’s rulings for two reasons.

First, the letters of assignment have nothing to do with KEIC’s rights to enforce the bills of exchange. The letters of assignment between Mega Power and KEIC simply assigned Mega Power’s rights to enforce its sales contract against Audiobahn. Mega Power, however, already had sold its right to receive payment from Audiobahn under the sales contracts when Mega Power issued the bills of exchange to Kookmin Bank. KEIC’s subrogation right to enforce the bills of exchange, however, arose from its payment to Kookmin Bank. The letters of assignment simply clarified that Mega Power could not seek payment directly from Audiobahn. Thus, KEIC still should have prevailed even if the letters of assignment contained a condition subsequent that would have ultimately rendered them invalid.

Second, the letters of assignment do not contain a condition subsequent. The provision cited by the trial court reads: “The Exporter hereby agrees to notify the Importer of the fact of assignment hereunder immediately after the signing of this Letter

of Assignment. The Exporter hereby agrees that the notification shall be made by such methods as will make the assignment hereunder fully effective and valid with respect to the Importer and any third parties. Without prejudice to the above obligation to notify the importer of the assignment hereunder, the Exporter hereby grants to KEIC the full power and authority to notify the Importer of the assignment on behalf of the Exporter.”

Nothing in the foregoing provision requires KEIC to notify Audiobahn of the assignment; although KEIC may give notice, only Mega Power is contractually obligated to do so. Moreover, the agreement does not state or even suggest the assignment automatically fails unless notice is given. The agreement’s requirement that “notification shall be made by such methods as will make the assignment hereunder fully effective and valid with respect to the Importer and any third parties,” simply recognizes that a debtor receives a discharge for any payments made to the assignor before notice of the assignment. (See *Producers Cotton Oil Company v. Amstar Corporation* (1988) 197 Cal.App.3d 638, 656.) Although Mega Power breached its contractual duty to give immediate notice of the assignment to Audiobahn, this failure did not affect the validity of the assignment because Audiobahn admitted it had made no payments on the shipment to Mega Power. Thus, the letters of assignment do not defeat KEIC’s rights to enforce the bills of assignment.

In ruling in Audiobahn’s favor, the trial court expressed concern for the financial harm Audiobahn would suffer by losing its offsets against Mega Power, which had declared bankruptcy. But this concern does not support the abrogation of KEIC’s statutory rights. Accordingly, we reverse. Because the trial court found Kookmin Bank was a holder in due course of the bills of exchange, and KEIC stood in the shoes of Kookmin Bank, a new trial is unnecessary.

III

DISPOSITION

The judgment is reversed, and the trial court is directed to enter a new judgment in KEIC's favor against Audiobahn in the full amount of the disputed bills of exchange, including appropriate interest and costs. KEIC is entitled to its costs of this appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.